

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4341 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DAMAI GRAM PANCHAYAT

Versus

DISTRICT COLLECTOR

Appearance:

MR MC BHATT for Petitioner

MR UR BHATT, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 11/02/2000

ORAL JUDGEMENT

In this petition under Articles 226 and 227 of the Constitution, the petitioner-Damai Gram Panchayat has challenged the order dated 28.5.1987 (Annexure "B") of the Collector, Sabarkantha as confirmed by the State Government through the Deputy Secretary (Appeals), Revenue Department by order dated 5.7.1988 (Annexure "C").

2. It appears that the petitioner-Gram Panchayat had constructed seven shops on the land admeasuring 123 sq.mtrs. on the South of the Panchayat office. The Panchayat submitted an application to the Collector for permission to change the user of the land. Thereupon the Collector issued a show cause notice dated 12.3.1987 calling upon the Panchayat to show cause why appropriate steps should not be taken as there was no record to show that the land in question was transferred to the Gram Panchayat. Ultimately the Collector passed the impugned order at Annexure "B" holding that no evidence was produced by the Sarpanch in support of the contention of the Gram Panchayat that the land belonged to the Panchayat and that the land appeared to be old chavdi land i.e. the land was to be used for public purpose, but the Panchayat has used the same for profiteering by constructing seven shops and that the Panchayat had also not given any undertaking for paying the occupancy price for the land in question. Hence, the Collector passed the impugned order rejecting the application of the Gram Panchayat for permission to change the user of the land and also called upon the Panchayat to remove the encroachment and to hand over the land with the building to the State Government. The revision application filed by the Panchayat came to be rejected by the State Government. Hence, the present petition.

3. The learned counsel for the petitioner has submitted that the Talati-cum-Mantri of the petitioner Panchayat was deputed to represent the case before the Collector, but he was not heard by the Collector because it was expected by the office of the Collector that the Sarpanch of the Panchayat should remain present at the hearing of the case. This submission is made on the basis of the contents of para 2 of the petition which have remained uncontroverted.

The next contention raised on behalf of the petitioner Panchayat is that from the rent being realized by the Panchayat from the lessees of the said seven shops, the Panchayat is able to utilize the income for public purposes and, therefore, the Panchayat has committed no wrong in constructing the shops and letting them out because that was found to be a more expedient way of making use of the land as the Panchayat gets recurring income for providing amenities to the local people.

4. The learned counsel further submitted that the land in question is already shown in the property

register of the Panchayat at item No. 124 and that earlier there was a dilapidated building on the land in question and that the same was demolished and in place thereof seven shops were constructed and, therefore, the Panchayat was merely required to make an application for permission to change the user of the land in question.

5. On the other hand, the learned AGP submitted that there is nothing in the impugned order to show that the Talati-cum-Mantri had remained present and that the order of the Collector clearly mentions that the Sarpanch had neither remained present nor submitted any written reply in spite of service of notice. It is further submitted that since the Panchayat did not produce any evidence to show that the land was transferred to Panchayat at any point of time, the Collector and the State Government were justified in passing the impugned orders.

6. Having heard the learned counsel for the parties and having regard to the facts that there are already existing seven shops on the land in question which are let out by the Panchayat to tenants and that the rent received by the Panchayat is being utilized for public purposes and also having regard to the fact that the assertion made on behalf of the petitioner Panchayat that its Talati-cum-Mantri had remained present at the hearing before the Collector, but on account of absence of the Sarpanch, the Collector did not hear the Talati-cum-Mantri, it would be just and proper to remand this matter to the Collector for giving one more opportunity to the petitioner Gram Panchayat to show whether the land in question was ever transferred to the Panchayat and also to examine the petitioner's contention that earlier there was a building which was dilapidated and that seven shops in question were constructed only at the same place where the dilapidated building stood and, therefore, the Panchayat was only required to make the application for permission to change the user of the land and also having regard to the fact that, as mentioned in the order of the Collector at Annexure "B", the Deputy Collector had also recommended in favour of the petitioner Panchayat and in view of the statement made in ground (1) of the petition that the Panchayat is ready and willing to pay the occupancy price for regularizing the disputed construction and for allowing the petitioner to use the disputed property and for permission to change the user of the property, this appears to be a fit case for remanding the matter back to the authorities.

6. In view of the above discussion, without prejudice to the rights and contentions of the parties,

this petition is allowed and the impugned orders of the Collector, Sabarkantha at Annexure "B" and of the State Government in revision at Annexure "C" are set aside and the matter is remanded to the Collector, Sabarkantha for examining the entire matter afresh after giving the petitioner-Gram Panchayat an opportunity of being heard and to produce any evidence which may be available with it or with any other Government authority.

Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

February 11, 2000 (M.S. Shah, J.)
sundar/-